IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6078 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

IDAR MUNICIPAL BOROUGH

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioners

MR MUKESH PATEL, ASSTT. GOVERNMENT PLEADER for Respondent No. 1 and 4 (absent)

MR R.A. MISHRA, Advocate for respondent No.2

MR P.B. MAJMUDAR, Advocate for respondent No.3.

MRS. K.A.MEHTA, Advocate for respondent Nos.5 to 12

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 21/02/97

ORAL JUDGEMENT

The petitioners have challenged the order dated 10.5.1983 at Annexure "A" to the petition made by the Development Commissioner, State of Gujarat, under Section 298 (1)(iv) of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the said Act"), directing allocation of the nine employees' name therein for absorption in the Idar Nagar Panchayat on the ground that they were the employees affected by the alteration of the limits of the Panchayat.

The Idar Nagar Panchayat was the original petitioner in this matter and is now succeeded by the Idar Municipal Borough which has prosecuted this petition by substituting itself for the original petitioner No.1, in view of the conversion of the Panchayat into a Municipal Borough. The case of the petitioners is that the survey Nos. 41 and 42 which are purported to have been transferred under the Notification dated 16.1.1971 issued by the State Government under Section 9(2) of the said Act from the Jawanpura Group Gram Panchayat, the respondent No.3 herein, to the Idar Nagar Panchayat, by including the said area in the Idar Nagar Panchayat and excluding it from the respondent No.3 Panchayat was only a mistaken exercise because these survey numbers already belonged to the Idar Nagar Panchayat since much prior to the issuance of the said notification. According to the petitioners, ever since the period of the erstwhile State of Idar these three survey numbers belonged to Idar and therefore, even the earlier order issued under Section 7A of the Bombay Land Revenue Code on 31.12.1969 as per Annexure "B" to the petition by the Government by which it was declared that with effect from 31.12.1969 the survey numbers 41 and 42 forming part of Jawanpura village of Idar Taluka will be excluded from the village limits and the land will be included in the limits of Idar village, was unnecessary. When the order dated 31.12.1969 and the Notification dated 16.1.1971 at Annexures "B" and "C" to the petitions were issued in respect of these survey Nos., the Jawanpura Group Gram Panchayat had challenged them by preferring Special Civil Application No. 120/70 and Special Civil Application No. 164/71 before this Court. Thereafter, Special Civil Application No. 120/70 was withdrawn while Special Civil Application No. 164/71 was summarily dismissed initially but after the order of summary dismissal was set aside in the Letters Patent Appeal No. 122/71, it was heard again

and disposed of on 11.2.1975 by the learned Single Judge relegating the respondent No.3 to the alternative remedy of filing a suit in the matter. It appears that interim relief was granted for a period of 75 days against the said Notification so as to enable the respondent No.3 Panchayat to approach the Civil Court.

Thereafter, Regular Civil Suit No. 135/75 was filed by the respondent No.3 Panchayat in the Court of Civil Judge (S.D), Himmatnagar claiming right over the disputed survey Nos. 41 and 42 and challenging the validity of the order dated 31.12.1969 issued under Section 7A of the Bombay Land Revenue Code and the Notification dated 16.1.1971 issued under Section 9(2) of the said Act. In that suit the trial Court held that the respondent No.3 Panchayat (plaintiff therein) failed to prove that survey Nos. 41 and 42 were part of Jawanpura village. It was held that the respondent No.3 was not entitled to collect any octroi in respect of the said area. The challenge against the said order and Notification was rejected and it was held that the Idar Nagar Panchayat proved that survey Nos. 41 and 42 were within the limits of that Panchayat and that they were entitled to collect octroi and other income in respect of the said area. The suit of the respondent No.3 was therefore dismissed. The Civil Appeal No.17 of 1980 which was filed against that decision preferred by the respondent No.3 was also dismissed on 22.4.1983 by the District Judge, holding that the disputed survey Nos. 41 and 42 were within the limits of Idar Nagar Panchayat and that the Idar Nagar Panchayat had a right to collect octroi. The validity of the order dated 31.12.1969 and the notification dated 16.1.1971 was upheld. In the process, an observation was made, on which much reliance is placed on behalf of the petitioner, to the effect that a mistake even on the part of the Government in issuing these Notifications cannot change the true position that these two survey numbers were part and parcel of the Idar village even before these notifications were issued. Against the decision of the District Court Second Appeal No. 146/83 was preferred, which came to be summarily dismissed on 6.5.1983 by the High Court. The decision of the Civil Court in Suit No. 135/75 thus, became final. However, there were other suits filed by the residents of Jawanpura village, which according to the petitioners, were filed at the behest of the respondent No.3 Panchayat, but all those efforts failed. According to the petitioners, despite the decision of the Civil Court holding that the said survey numbers belonged to Idar Nagar Panchayat, the respondent No.3 Panchayat continued to collect octroi from these areas until the petitioner

No.1 filed Regular Civil Suit No. 146/86 in the Court of Civil Judge (S.D), Himmatnagar and obtained an interim injunction against the respondent No.3 Panchayat on 30th September, 1986. The case of the petitioner is that though it was not necessary to publish the Notification dated 16.1.1971, which was mistakenly issued, the same came to be published on 9.3.1993 as per Annexure "L" to the petition. As these two disputed survey numbers always belonged to Idar ever since the existence of Idar State, there was no scope for exercising powers under Section 298(1)(iv) and allocating the employees of the Jawanpura Panchayat to the petitioner Panchayat. According to the petitioners, since these disputed survey numbers always belonged to Idar, there was no need to exclude them from Jawanpura and include them in Idar.

The case of the respondent No.1 - Development Commissioner, is that the disputed survey numbers 41 and 42 were, vide Notification dated 16.1.1971 at Annexure "C" to the petition, excluded from the Jawanpura Group Gram Panchayat and included in Idar Nagar Panchayat under the provisions of clauses (a) and (b) of sub-section (2) of Section 9 of the said Act. Since due to various proceedings the said Notification which was required to be published under the said provision could not be so published, ultimately, after removal of all hindrances, it came to be published on 9.3.1993. It is the case of the said respondent that he has been empowered under sub-section (iv) of Section 298(1) of the said Act to allocate the affected employees to the Panchayat in which such area was included. According to him before issuing the notification, the petitioner No.1 and the Sabarkantha District Panchayat and others concerned were consulted and in fact election was conducted when the area of Idar Nagar Panchayat came to be reconstituted by the inclusion of these disputed survey numbers.

The case of the respondent No.3 Panchayat in its affidavit in reply is that the disputed survey numbers were part and parcel of the respondent No.3 Panchayat and therefore, notification was required to be issued for their inclusion in the Idar Nagar Panchayat. According to the respondent No.3, it was collecting octroi from the very beginning in respect of these disputed survey numbers but ultimately it had lost the battle and since the employees named in the impugned order were employed for this very area for collecting octroi, they were required to be allocated to the petitioner No.1 after the notification was finally published.

According to the affected employees who are

respondents Nos. 5 to 12, they came to be relieved by the respondent No.3 Panchayat from service by order dated 30th April, 1996 and gave joining report to the Chief Officer, Idar Municipal Borough on 1.5.1996, in view of their allocation to the petitioner No.1. However, they were not allowed to work, nor were they allowed to sign the Muster-roll and they have remained in a precarious position.

It has been contended by the learned Counsel appearing for the petitioners that the impugned order issued in purported exercise of powers under Section 294(1)(iv) is without jurisdiction and authority and illegal, inasmuch as no question of alteration of limits as contemplated by Section 298(1) arose since there was already a finding of the Courts that these disputed survey Nos. 41 and 42 were always part of Idar village even prior to the issuance of the notifications. It was submitted that these notifications were only mistakenly issued, as held by the District Court and since the disputed survey numbers were already part of Idar village, there was no need of excluding them from the respondent No.3 Panchayat and including them in the local area of the petitioner No.1. The learned Counsel further argued that even if it was assumed that the area of survey Nos. 41 and 42 was excluded from the limits of the respondent No.3 Panchayat and included in the limits of Idar Nagar Panchayat, by virtue of the Notification dated 16.1.1971, then also while exercising the powers under Section 298(1)(iv) of the Act, the Development Commissioner had no authority to direct the petitioner No.1 to absorb the employees of the respondent No.3 Panchayat. He argued that even on an assumption that the Development Commissioner had such power, only such employees who were working at the time of the alteration of the limits could be allocated and not those who were recruited after the issuance of the notification dated 16.1.1971. He submitted that thus, only two employees who were recruited in 1965 could find their place with the petitioner No.1 and all the remaining seven employees could not be allocated as they were appointed after December, 1973 i.e. much after the date of the notification dated 16.1.1971. The learned Counsel further argued that appointments of some of these employees were illegal and such illegally appointed employees cannot be thrust upon the petitioner No.1 under the impugned order. It was submitted that the impugned order was made without hearing the petitioner No.1 and if the petitioner No.1 had been given an opportunity to have its say in the matter, it would have pointed out how the appointments of these employees was illegal and the

petitioner No.1 would also have pointed out various other aspects of the matter. It was submitted that a personal hearing was sought by the petitioner No.1, but it was not given. It was therefore contended that the impugned order has been made in violation of principles of natural justice and is therefore, null and void. It was submitted that hearing was all the more necessary because of the inordinate delay in the making of the impugned order consequent upon the notification dated 16.1.71.

It was contended on behalf of the respondents that in the proceedings where the notifications were challenged, the petitioner No.1 had not contested the validity of the notifications and had in fact supported them. The Courts had upheld the validity of these notifications and since the notification was published ultimately, after the prolonged legal battle in the Gazette, on 9th March, 1993, the consequential orders under Section 298(1)(iv) could be made only thereafter. It was submitted that the correspondence indicates that there was consultation with the petitioner No.1 before issuing the notification under Section 9(2) and that the say of the petitioner was also obtained before making the impugned order. It was also submitted that the respondent employees who are being allocated under the provisions of law could not be subjected to scrutiny of the validity of their appointment by the petitioner No.1 when their appointment was valid according to their appointing authority.

The short question that arises for consideration in the matter, which has been sufficiently long drawn, is whether the allocation of the respondents Nos. 5 to 12 employees under the impugned order should be upheld or not. The facts on record clearly disclose that the notification dated 16.1.1971 at Annexure "C" to the petition was upheld by the Civil Court in its decision dated 18th April, 1980 given in Regular Civil Suit No. 135/75. In its finding on issue No.10, the trial Court in paragraph 41 of its judgement held that taking into consideration the evidence on record the plaintiff (i.e. the present respondent No.3 Panchayat) had failed to prove that the orders dated 31.12.1961 and 16.1.1971 (i.e. the Notification dated 16.1.1971 at Annexure "C" to the present petition) are illegal, invalid, malafide or without authority. It held that on the contrary there is everything on record to show that both these orders are quite legal and have been passed under the authority of the Government. The appeal Court in answer to points Nos. 4 and 5 which it had framed in this regard held that it was not proved that the impugned notification

dated 16.1.1971 was malafide or illegal or ineffective for any other reason. In these proceedings of Civil Suit No. 135/75, the predecessor in title of the present petitioner No.1, had in its written statement contended that the disputed survey Nos. 41 and 42 were already within the limits of Idar village ever since 2.11.1946. It was contended that the notifications excluding these survey numbers from the respondent No.3 Panchayat and including them in the Idar village were issued only for technical reasons and did not alter the position that they were already part of the limits of Idar Nagar Panchayat. It was in terms contended in paragraph 21 of that written statement that the said notification was issued in accordance with law and was in consonance with the facts. At more than one place in that written statement the validity of the said notification was defended by the petitioner No.1. However, in paragraph 26, it was in the alternative stated that it was not necessary to issue the notification, but even when it was issued the rights which were acquired by the Idar Panchayat were not in any way adversely affected. The petitioner No.1 had never taken up a stand that the notification should be declared to be non-est on the ground that the disputed survey numbers already belonged to the petitioner Panchayat. On the contrary, since the notification was putting to end a long-standing controversy in respect of the disputed survey numbers, the petitioner Panchayat had chosen to defend it in a suit in which the respondent No.3 had questioned the same. The issuance of the notification is to be viewed in the light of the fact that though the petitioner No.1 Panchayat was claiming ownership in respect of the disputed survey numbers on its own say, the respondent No.3 Panchayat was collecting the octroi in respect of these survey numbers by treating it as if it was within its limits. The respondent No.3 Panchayat was constituted on 4.1.1955 under the provisions of the Bombay Village Panchayats Act, 1933 as stated in paragraph 4 of the petition and after its formation it started taking advantage of the geographical position of survey Nos. 41, 42 and 43 and was collecting octroi over the said land as stated by the petitioners in paragraph 6 of this petition. The defacto control in respect of these disputed survey numbers of the respondent No.3 Panchayat continued despite the issuance of the notification and even during the legal proceedings and only when interim injunction was granted on 30th September, 1986 that the petitioners became successful in preventing the respondent No.3 from collecting the octroi as stated in paragraph 13 of the petition. Even thereafter that order was carried in appeal and in

revision, which revision came to be dismissed on 19.1.1989. There was further litigation between the parties as narrated in the petition. Ultimately, the notification dated 6.1.1971 came to be published in the Gazette dated 9th March, 1993 in which the history of the litigation and the reason why the notification dated 16.1.1971 could not be earlier published, were narrated. Even the learned District Judge who had observed in the appeal that the issuance of the notification was an exercise in futility, had held that the action of the Government and the Commissioner though taken in a particular manner, was more or less meant to put an end to the controversy. The observations regarding the notification having been issued, though not necessary, were made in the context of the dispute regarding the ownership of the respective Panchayat over the said survey numbers. The fact remains that all throughout since 1955 onwards and even after the preparation of the notification dated 16.1.1971, the defacto control in respect of the survey numbers 41 and 42 had remained with the respondent No.3 Panchayat. The Notification dated 16.1.1971 was intended to put the matter beyond any pale of doubt or controversy by formally ordering the exclusion of the disputed survey numbers from the limits of the respondent No.3 Panchayat and including them in the Idar Nagar Panchayat. The challenge against the notification was negatived and its validity was in terms upheld and at the relevant time, as noted above, the validity of that notification was also supported by the petitioner No.1. Under these circumstances, it is not possible to accept the contention raised on behalf of the petitioners that the said notification on its publication should not be given its effect as statutorily contemplated.

It will be noticed from the provisions of Section 9(2) of the said Act that the State Government may, after consultation with the Taluka Panchayat, the District Panchayat and the Nagar or Gram Panchayat concerned, by Notification include within or exclude from any Nagar or Gram any local area or otherwise alter the limits of any Nagar or Gram and thereupon the local area shall be so included or excluded for the limits of Nagar or Gram so altered. The words "by like Notification" occurring in sub-section (2) of Section 9 refer to the Notification of the nature mentioned in Section 9(1) would mean, `by notification in the official Gazette'. The process of inclusion or exclusion could thus, be achieved by issuing a notification in the official gazette. It is precisely because of this requirement that the notification dated 16.1.1971 at Annexure "C" to the petition had specified

at the end that the said notification would come into force from the date of its publication in the Government gazette. However, the publication of the notification in the Government Gazette was thwarted because of prolonged legal battle and it is only on 9th March, 1993 that the notification could be so published. In the context of the present controversy, the publication of the notification in the gazette dated 9.3.1993 is relevant because under Section 298(1) of the said Act, the consequences of alteration of limits of Gram or Nagar Panchayat can take place only when the limits are altered by a notification under Section 9(2) of the Act and that notification is a notification which is published in the official gazette and not a notification which is prepared but not yet published. The fact that it is given its operation from an earlier date because the notification dated 16.1.1971 could not be published due to the legal proceedings, will not make the exercise of power under Section 298(1) of the said Act illegal when it is exercised after the publication of the notification in the gazette. In fact, prior to the publication of the notification under Section 9(2) of the Act, it can be said that, there was no occasion to exercise the powers under Section 298(1)(iv) of the Act. The impugned order in respect of nine employees who are said to have been affected by the notification including the disputed survey numbers in the Idar Nagar Panchayat was issued on 10th May, 1993 and as per the provisions of Section 298(1) even that order is required to be published in the official gazette. The publication of that order could not be achieved because of the interim order made in the present proceedings staying the impugned order. Since the occasion to exercise powers under Section 298(1)(iv) had arisen only after the notification under Section 9(2) was published and by way of its statutory consequence, it cannot be said that the impugned order had been passed illegally or without jurisdiction.

The contention that the Development Commissioner had no authority to direct the Panchayat to absorb the employees who were recruited after 16.1.1971 is also without substance because on 16.1.1971 the notification could not be published and as recorded therein, it was to become effective from the date of publication in official gazette and that stipulation was in consonance with the requirement of the provisions of Section 9(2) under which the alteration could be effected only by a notification published in official gazette. Since the consequences provided by Section 298 of the Act could be ordered only after the notification under Section 9(2) of the Act is published in the official Gazette, the relevant date

would therefore be the date when the notification was published on 9.3.1993. Therefore, the employees who were concerned with the collection of the octroi by the respondent No.3 in respect of these disputed survey numbers could be validly allocated to the petitioner No.1 under the impugned order even though they were appointed after 16.1.1971 when the notification was prepared and forwarded for its publication in the official Gazette for being made effective from the date on which it is published.

The contention that some of the employees were not legally appointed when they were recruited by the respondent No.3 Panchayat and therefore, they could not be passed on to the petitioner No.1 under the impugned order is raised in support of the contention that the impugned order has been made without hearing the petitioner No.1. Otherwise, it would not be open for this Court to go into the validity of the appointment of the employees recruited by the respondent No.3 Panchayat who are being allocated by the respondent No.1 to the petitioner No.1 Panchayat, in this petition. Section 298(1)(iv) empowers the State Government to allocate the employees to the Panchayat affected by the alteration of the limits. Therefore, if the employees are considered to be the employees of the Panchayat from where they are to be allocated by the State Government, then after allocation they will become the employees of the Panchayat to which they are allocated and that receiving Panchayat would ordinarily not have any ground to go behind the validity of their initial recruitment which was considered to be valid and proper by the State Government while making the allocation.

The grievance of the petitioners that there was no consultation while issuing the notification under Section 9(2) of the Act, is without substance. It has been recorded in the notification dated 16.1.1971 at Annexure "C" to the petition that the notification was issued after consultation with the Jawanpura Gram Panchayat, Idar Taluka Panchayat and Sabarkantha District Panchayat. At no point of time earlier in the proceedings in which the notification dated 16.1.1971 was challenged by the respondent No.3, did the petitioner No.1 take up a stand that it was not consulted in the matter. In fact, the petitioner No.1 supported the legality of that notification on the ground that it was issued for administrative reasons and for technical considerations, in view of the long standing dispute in respect of the two survey numbers, which had resulted due to the respondent No.3 Panchayat exercising defacto

control over these survey numbers and collecting the octroi right from the year 1955 till it could be judicially prevented. The consultation that had taken place while ordering the notification dated 16.1.1971, obviously would have taken into account all the relevant aspects which had a bearing on issuance of that notification. It is however, contended that the petitioner No.1 ought to have been consulted again and since it has not been given any opportunity of hearing though asked for, the impugned order was null and void being violative of principles of natural justice.

The provisions of Section 298(1) are by way of a statutory consequence of the alteration of limits of Gram or Nagar Panchayat and they do not contemplate any hearing to be given before issuing such consequential orders. It will be noted that consultation with the Panchayat is contemplated before issuing the notification under Section 9(2) and obviously that consultation would ordinarily take into account all the relevant aspects in the matter of inclusion or exclusion of any local area which had the effect of altering the limits of any Nagar or Gram. However, assuming that hearing was necessary before making any orders that may have adverse effect in the matter of allocation of any employee of the Panchayat, it is sufficiently established from the facts on record that the concerned authority had obtained the views of both the Panchayats and was having material forwarded to it by the District Panchayat before making the impugned order. The nature of opportunity of being heard would depend upon the nature of the proceedings which are undertaken and their impact on the rights of the parties who are affected by the exercise of that power. In the present context, the consultation while issuing notification under Section 9(2) is required to be kept in mind while viewing consequential orders made under Section 298 pursuant to such notification. The nature of the proceedings of issuing the consequential orders would not require any party to be heard in person. What is material is whether the say of the affected party and other relevant aspects were considered by the authority passing the consequential order, so that its order may not be termed as an arbitrary exercise of power. It would appear that on 1.1.1987 the State Government had addressed a communication (Annexure "E") to the Development Commissioner in respect of these two survey numbers and in that communication, attention was specifically focused on the question of the employees and a suggestion was mooted whether the entire Jawanpura area could be included in the Idar Nagar Panchayat. Specific mention was made as regards collection of octroi from

survey Nos. 41 and 42 and it was indicated that the District Panchayat should join as a party in the litigation and try to move the Court for getting an order for appointment of a Commissioner for collection of octroi or for getting a direction on the respondent No.3 Panchayat to keep separate accounts of the octroi collected by it. Copy of this letter was forwarded to the District Development Officer, Idar Nagar Panchayat and Jawanpura Gram Panchayat. The Chairman of the Idar Nagar Panchayat responded to the said letter by its letter dated 12.1.1987 which is at Annexure "F" to the petition, addressed to the State Government, in which the order dated 1.1.1987 was challenged. In that communication, request was made to enquire into the appointments which were made by the respondent No.3 Panchayat and to stay any allocation of such employees to the Idar Nagar Panchayat. Thereafter, in the communication dated 7.11.1987 addressed to the Government by the Idar Nagar Panchayat, the facts regarding the litigation in respect of these two survey numbers were mentioned in detail and a request was made that proceedings should be initiated for recovering the octroi which was collected by the respondent No.3 Panchayat till 1986. On 7.7.1992, the respondent No.3 Panchayat made an application to the Development Commissioner praying for the allocation of the staff which was doing the work of collection of octroi in respect of survey Nos. 41 and 42 to the Idar Nagar Panchayat under Section 298 of the Act. A copy of this letter was sent to the concerned authorities as well as to the Idar Nagar Panchayat. It appears from the endorsement below that copy, which was received by the petitioner No.1 and a xerox of which is at Annexure "H" to the petition, that the petitioner No.1 was fully aware about the fact that the demand was made for issuing the consequential order of allocation of the affected employees to the petitioner Panchayat under Section 298 of the said Act. Soon thereafter, on 25th August, 1992 a detailed reply was sent by the Idar Nagar Panchayat to the District Development Officer, in which submissions were made in respect of the staff which was required to be allocated and it was stated that it should be ensured that there was no permanent financial loss caused to the Panchayat and that it was not imposed any additional burden. It was also stated that if the staff of the Jawanpura Gram Panchayat was as per the sanctioned establishment, then the question would arise of absorbing the staff elsewhere and therefore, all the relevant facts should be verified. It was also stated that the employees who were appointed by the respondent No.3 Panchayat in excess of the sanctioned posts should be relieved and they cannot be appointed even on temporary

basis in the Idar Nagar Panchayat. In short, the Idar Nagar Panchayat had put-forth its views on the question of allocation of the affected staff, in their letter dated 25.8.1992. It was not incumbent upon the authorities to give any personal hearing in the matter and it was sufficient to take into account the objections which were put up by the petitioner No.1 Panchayat. It appears that on 3.11.1992 the District Development Officer to whom the communication dated 25.8.1992 was addressed by the Idar Nagar Panchayat, had written a letter to the Development Commissioner giving break up of various posts which were lying vacant in the Idar Nagar Panchayat as on 31.8.1992 and the affected staff of the Jawanpura Group Gram Panchayat. The said communication was sent, forwarding with it the proposal and the file containing as many as 19 pages. There was a proposal to make orders under Section 298(1)(iv) of the Act for allocating the affected employees. It was stated that the respondent No.3 Panchayat had to bear the establishment expenses in respect of the surplus staff who were affected on the respondent No.3 Panchayat having ceased to collect the octroi in respect of the said two survey numbers. The particulars of the nine employees were forwarded with this proposal and necessary orders were sought. Copy of this communication was sent to both the concerned Panchayats. The said proposal was considered by the concerned authority before issuing the impugned order dated 10.5.1993 as is clear from the recitations made in the order and the respondents Nos. 5 to 12 were ordered to be allocated to the petitioner No.1 Panchayat. Under these circumstances, it cannot be said that the impugned order of allocation of the affected employees was made without taking into account the views of the petitioner No.1 Panchayat. In fact the petitioner No.1 Panchayat cannot have any authority to say no to any allocation which is ordered to be made under Section 298(1)(iv) which is a statutory consequence prescribed by the Act when the alteration was done by issuing notification under Section 9(2) of the Act. The allocation is required to be worked out by the State Government and in the instant case, from the record it appears that all the relevant aspects have gone into consideration before the making of the impugned order. The impugned order cannot therefore be said to be arbitrary or illegal or made without authority. as sought to be contended on behalf of the petitioners.

Under the above circumstances, the challenge of the petitioners against the impugned order fails, nor are the petitioners entitled to any direction on the respondent No.1 for rectifying the notification dated

16.1.1971 or its publication made on 9.3.1993. Under these circumstances, the petition is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

At this stage the learned Counsel for the petitioner submits that the interim relief may be continued for some more time to enable the petitioners to approach the appellate forum. It would be noted from the record that the respondents Nos. 5 to 12 who are the affected employees have been suffering for no fault on their part. On one hand they have been relieved by the respondent No.3 Panchayat on the allocation order being passed as a statutory consequence under Section 298 of the Act and on the other the petitioners have been successful so far in unjustly keeping them away. This state of affairs can never be countenanced and it would have been proper on the part of the petitioners to have put an end to the agony of these employees by accepting their statutory allocation. The request is therefore, rejected.
